

106TH CONGRESS  
2D SESSION

# S. 3159

To amend the Fair Labor Standards Act of 1938 to clarify provisions relating to the use of accrued compensatory time by certain public employees.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 4 (legislative day, SEPTEMBER 22), 2000

Mr. ASHCROFT introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Fair Labor Standards Act of 1938 to clarify provisions relating to the use of accrued compensatory time by certain public employees.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. AMENDMENT TO THE FAIR LABOR STANDARDS**

#### 4 **ACT OF 1938.**

5 (a) IN GENERAL.—Paragraph (5) of section 7(o) of  
6 the Fair Labor Standards Act of 1938 (29 U.S.C.  
7 207(o)(5)) is amended to read as follows:

8 “(5)(A) An employee of a public agency which is a  
9 State, political subdivision of a State, or an interstate gov-  
10 ernmental agency—

1           “(i) who has accrued compensatory time off au-  
2           thorized to be provided under paragraph (1), and

3           “(ii) who has requested the use of such compen-  
4           satory time,

5 shall be permitted by the employee’s employer to use such  
6 time within a reasonable period after making the request  
7 if the use of the compensatory time does not unduly dis-  
8 rupt the operations of the public agency.

9           “(B)(i) An employer to which subparagraph (A) ap-  
10          plies may not compel an employee to use accrued compen-  
11          satory time absent a request from such employee for the  
12          use of such time.

13          “(ii)(I) Not later than January 31 of each calendar  
14          year, an employer to which subparagraph (A) applies shall  
15          provide monetary compensation for any unused compen-  
16          satory time off accrued by an employee during the pre-  
17          ceding calendar year that was not used prior to December  
18          31 of the preceding calendar year at the rate of compensa-  
19          tion prescribed by subclause (II). An employer may des-  
20          ignate and communicate to the employees of the employer  
21          a 12-month period other than the calendar year, in which  
22          case the compensation shall be provided not later than 31  
23          days after the end of the 12-month period.

24          “(II) The rate of compensation prescribed in this sub-  
25          clause is a rate that is not less than—

1           “(aa) the regular rate of compensation received  
2       by the employee involved when the compensatory  
3       time off was earned; or

4           “(bb) the final regular rate of compensation re-  
5       ceived by such employee;  
6       whichever is higher.

7       “(iii) An employer to which subparagraph (A) applies  
8       shall provide an employee, upon the written request of the  
9       employee, with monetary compensation for the employee’s  
10      unused compensatory time off. Such compensation shall  
11      be paid by the employer not later 30 days after the date  
12      on which the employer receives the written request for  
13      such monetary compensation. The compensation shall be  
14      provided at the rate prescribed by clause (ii)(II).

15       “(C)(i) Except as provided in clause (ii), the accept-  
16      ance by an employee to which this paragraph applies of  
17      compensatory time off in lieu of monetary overtime com-  
18      pensation may not be a condition of employment.

19       “(ii) In a case in which a valid collective bargaining  
20      agreement exists between an employer to which subpara-  
21      graph (A) applies and the labor organization that has been  
22      certified or recognized as the representative of the employ-  
23      ees of the employer under applicable law, an employee may  
24      only be required under this subparagraph to receive com-

1   pensatory time off in lieu of monetary overtime compensa-  
 2   tion in accordance with the agreement.

3       “(D)(i)(I) An employer to which subparagraph (A)  
 4   applies shall not directly or indirectly intimidate, threaten,  
 5   or coerce, or attempt to intimidate, threaten, or coerce,  
 6   any employee for the purpose of—

7           “(aa) interfering with the rights of the em-  
 8   ployee under this paragraph to request or not re-  
 9   quest compensatory time off in lieu of payment of  
 10   monetary overtime compensation for overtime hours;

11          “(bb) interfering with the rights of the em-  
 12   ployee to use accrued compensatory time off in ac-  
 13   cordance with this paragraph; or

14          “(cc) requiring the employee to use the compen-  
 15   satory time off.

16       “(II) In subclause (I), the term ‘intimidate, threaten,  
 17   or coerce’ includes promising to confer or conferring any  
 18   benefit (such as appointment, promotion, or compensa-  
 19   tion) or effecting or threatening to effect any reprisal  
 20   (such as deprivation of appointment, promotion, or com-  
 21   pensation).

22       “(ii) An employer to which subparagraph (A) applies  
 23   shall permit an employee to elect, for an applicable  
 24   workweek—

1           “(I) the payment of monetary overtime com-  
2           pensation for the workweek; or

3           “(II) the accrual of compensatory time off in  
4           lieu of the payment of monetary overtime compensa-  
5           tion for the workweek.”.

6           (b) REMEDIES AND SANCTIONS.—Section 16 of the  
7           Fair Labor Standards Act of 1938 (29 U.S.C. 216) is  
8           amended by adding at the end the following:

9           “(f) In addition to any amount that an employer is  
10          liable under subsection (b) for a violation of a provision  
11          of section 7, an employer that violates section 7(o)(5) shall  
12          be liable to the employee affected in an amount equal to—

13               “(1) the product of—

14                       “(A) the rate of compensation (determined  
15                       in accordance with section 7(o)(5)(B)(ii)(II));  
16                       and

17                       “(B)(i) the number of hours of compen-  
18                       satory time off involved in the violation that  
19                       was initially accrued by the employee; minus

20                       “(ii) the number of such hours used by the  
21                       employee; and

22               “(2) as liquidated damages, the product of—

23                       “(A) such rate of compensation; and

1                   “(B) the number of hours of compensatory  
2                   time off involved in the violation that was ini-  
3                   tially accrued by the employee.”.

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